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THE STATE OF NEW YORK

MJ DEPUTY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 ANN CHRZANOWSKI,
12 Plaintiff

15

vs.

JUDGE GEORGE ASSAD, CITY OF LAS VEGAS, a political subdivision of the state of Nevada; MARSHALL R. SAAVEDRA, John Does, I-X, each individually and in their official capacities,

Defendants.

CASE NO. CV-S-05-0418-RLH-PAL

**DEFENDANT CITY OF LAS VEGAS'
MOTION TO DISMISS**

19 Pursuant to Fed.R.Civ.P. 12(b)(6), Defendant CITY OF LAS VEGAS moves this Court for
20 an Order dismissing Plaintiff's Complaint on the grounds that Plaintiff has failed to state a claim
21 upon which relief may be granted.

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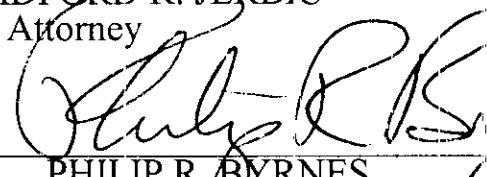
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1 This Motion is based upon the pleadings and papers on file herein and the following points
2 and authorities.

3 DATED this 23 RD day of August, 2005.

4 BRADFORD R. JERBIC
5 City Attorney

6 By 

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13 LAS VEGAS

POINTS AND AUTHORITIES

I.

PRELIMINARY STATEMENT

14 Plaintiff filed this action under 42 U.S.C. § 1983 over her detention in the Las Vegas
15 Municipal Court. Her claims against the CITY itself are based solely on an alleged failure to
16 investigate complaints against Court Marshalls and failure to supervise and train Court Marshalls.
17 Plaintiff's Complaint alleges, however, that the Court Marshall was acting at the direction of a
18 Municipal Judge. Under these circumstances, any failure to investigate complaints or train Court
19 Marshalls cannot constitute a constitutional violation.

20 According to the allegations of her Complaint, Plaintiff appeared in the Las Vegas
21 Municipal Court to request a continuance for her boyfriend. Complaint ¶ 11. The pleading
22 describes her interaction with the judge:

23 On or about March 31, 2003, at approximately, 10:30 a.m. the
24 plaintiff, arrived at the Las Vegas Municipal Court and was told that
she would have to return at the 3:30 p.m. session. The plaintiff
25 returned to the said court later that afternoon and was told that she
would have to appear before Judge, George Assad. When the
Plaintiff appeared before Judge George Assad, the said Judge
26 informed the plaintiff that Mr. Madera would have to appear in
Court because Judge George Assad alleged that Mr. Madera had
threatened a customer care representative with bodily harm. The
27 Plaintiff informed the Judge that she had been present during the
conversation and that she did not hear any threats, but that she heard
Mr. Madera asking for the person and her supervisor's name and

1 their respective extensions.

2 *Id.* at ¶ 12. Plaintiff alleges she was detained at the instruction of the presiding judge:

3 In response Judge George Assad then told the Plaintiff that she
4 would be held in custody until Mr. Madera came to Court. The
5 Plaintiff had no case pending before the Court, and had not engaged
6 in any conduct to warrant the Court or its personnel to take any
7 action against the Plaintiff. The Plaintiff was then taken into
8 custody by Defendant R. Saavedra who took the Plaintiff into the
9 back of the Court and told the Plaintiff to call Mr. Madera. The
10 Plaintiff told Mr. Madera what the Court had said and he asked to
11 speak to the Defendant Marshall, Officer Saavedra. The Plaintiff
12 overheard the Marshall say to Mr. Madera, "I don't know. I'm just
13 following orders. All I know is that you have to get your butt down
14 here to court." The Defendant then hung up and told the Plaintiff to
15 put her hands behind her. The Plaintiff who had not done anything
16 wrong was then handcuffed and placed into a holding cell.
17 *Id.* at ¶ 13.

18 Plaintiff alleges that the Court Marshall acted at the direction of the presiding Municipal
19 Judge. A bailiff is obligated to follow the orders and directions of the presiding judge. Under
20 these circumstances, any failure to investigate, train or supervise the bailiff cannot amount to a
21 constitutional violation.

22 II.

23 **THE STANDARD OF REVIEW**

24 In *Gilligan v. Jamco Development Corp.*, 108 F.3d 246, 248 (9th Cir. 1997), the Ninth
25 Circuit described the standard for reviewing a motion to dismiss under Fed.R.Civ.P. 12(b)(6) as
26 follows:

27 A dismissal for failure to state a claim pursuant to Fed.R.Civ.P.
28 12(b)(6) is a ruling on a question of law subject to de novo review.
29 *Stone v. Travelers Corp.*, 58 F.3d 434, 436-37 (9th Cir.1995). The
30 reviewing court considers only the contents of the complaint and
31 construes all allegations of material fact in the light most favorable
32 to the nonmoving party. *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th
33 Cir.1996); *Allarcom Pay Television, Ltd. v. General Instrument*
34 Corp., 69 F.3d 381, 385 (9th Cir.1995). A complaint should not be
35 dismissed "unless it appears beyond doubt that the plaintiff can
36 prove no set of facts in support of his claim which would entitle him
37 to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2
38 L.Ed.2d 80 (1957); *Parks Sch. of Business, Inc. v. Symington*, 51
39 F.3d 1480, 1484 (9th Cir.1995).

III.

THE CITY OF LAS VEGAS
IS NOT REQUIRED TO TRAIN
COURT MARSHALLS TO DISREGARD
THE INSTRUCTIONS OF MUNICIPAL JUDGES

Plaintiff alleges that the Court Marshall in this matter acted at the direction of a Municipal Judge. In claiming that the CITY failed to investigate, train or supervise the Marshall, Plaintiff is arguing that the CITY should encourage Court Marshall's to substitute their judgment for that of the presiding judge and ignore judicial orders. A court officer is required to follow the orders of the presiding judge and such obedience is necessary for the efficient administration of justice. The CITY is not constitutionally required to instruct Marshalls to ignore their basic duty.

The CITY may not be held liable, under 42 U.S.C. § 1983, under a respondeat superior theory. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 692 (1978). In *City of Canton v. Harris*, 489 U.S. 378, 388-9(1989), the Supreme Court described the limited circumstances in which failure to train employees amounts to a constitutional deprivation:

We hold today that the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact. This rule is most consistent with our admonition in Monell, 436 U.S., at 694, 98 S.Ct., at 2037, and Polk County v. Dodson, 454 U.S. 312, 326, 102 S.Ct. 445, 454, 70 L.Ed.2d 509 (1981), that a municipality can be liable under § 1983 only where its policies are the “moving force [behind] the constitutional violation.” Only where a municipality’s failure to train its employees in a relevant respect evidences a “deliberate indifference” to the rights of its inhabitants can such a shortcoming be properly thought of as a city “policy or custom” that is actionable under § 1983. As Justice BRENNAN’s opinion in Pembaur v. Cincinnati, 475 U.S. 469, 483-484, 106 S.Ct. 1292, 1300-1301, 89 L.Ed.2d 452 (1986) (plurality) put it: “[M]unicipal liability under § 1983 attaches where-and only where-a deliberate choice to follow a course of action is made from among various alternatives” by city policymakers. See also Oklahoma City v. Tuttle, 471 U.S., at 823, 105 S.Ct., at 2436 (opinion of REHNQUIST, J.). Only where a failure to train reflects a “deliberate” or “conscious” choice by a municipality—a “policy” as defined by our prior cases—can a city be liable for such a failure under § 1983.

(Emphasis added.)

A municipality is not subject to liability unless its policy directly causes a constitutional violation. In *Board of Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 404 (1997), the

1 Supreme Court stated:

2 As our § 1983 municipal liability jurisprudence illustrates, however,
3 it is not enough for a § 1983 plaintiff merely to identify conduct
4 properly attributable to the municipality. The plaintiff must also
5 demonstrate that, through its deliberate conduct, the municipality
6 was the "moving force" behind the injury alleged. That is, **a**
plaintiff must show that the municipal action was taken with the
requisite degree of culpability and must demonstrate a direct
causal link between the municipal action and the deprivation of
federal rights.

7 (Emphasis added.)

8 In this case, Plaintiff presumably argues that the CITY should have trained its Marshalls to
9 ignore judicial instructions if they disagreed with the action of the Judge. This theory ignores the
10 basic obligation of any bailiff or Court Marshall. In *Coverdell v. Department of Social and Health*
11 *Services, State of Wash.*, 834 F.2d 758, 765 (9th Cir. 1987), the Ninth Circuit stated:

12 The rationale for immunizing persons who execute court orders is
13 apparent. Such persons are themselves "integral parts of the judicial
14 process." *Briscoe v. LaHue*, 460 U.S. 325, 335, 103 S.Ct. 1108,
1116, 75 L.Ed.2d 96 (1983). **The fearless and unhesitating**
execution of court orders is essential if the court's authority and
ability to function are to remain uncompromised.

15 (Emphasis added.) Similarly, in *Martin v. Hendren*, 127 F.3d 720, 722 (8th. Cir. 1997), the Eighth
16 Circuit stated:

17 but Hendren was carrying out a judicial command in the judge's
18 courtroom and presence. Because judges frequently encounter
19 disruptive individuals in their courtrooms, exposing bailiffs and
20 other court security officers to potential liability for acting on a
judge's courtroom orders could breed a dangerous, even fatal,
hesitation. **"For the criminal justice system to function, ... courts**
must be able to assume their orders will be enforced."

21 (Emphasis added.)

22 While *Coverdell* and *Martin* concern quasi-judicial immunity for individuals executing
23 court orders, their rationale also insulates the City in this matter. The cases illustrate the basic
24 obligation of court officers to carry out judicial instruction. The CITY may not be held liable for
25 not training officers to ignore this basic obligation.

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1 IV.

2 **THE CITY IS NOT VICARIOUSLY**
3 **LIABLE FOR THE IMMUNIZED ACTS**
4 **OF THE INDIVIDUAL DEFENDANT**

5 The individual defendants, Judge Assad and Marshall Saavedra, have filed motions to
6 dismiss on the basis of absolute immunity. If these motions are granted, the state law claims
7 against the CITY must be dismissed.

8 While the CITY may be held liable under a respondeat superior theory on Plaintiff's state
9 law claims, its liability would be vicarious. *See National Convenience Stores v. Fantuzzi*, 94 Nev.
10 655, 657, 584 P.2d 689, 691 (1978). If the individual defendants are absolutely immune, the CITY
11 cannot be vicariously liable for their actions.

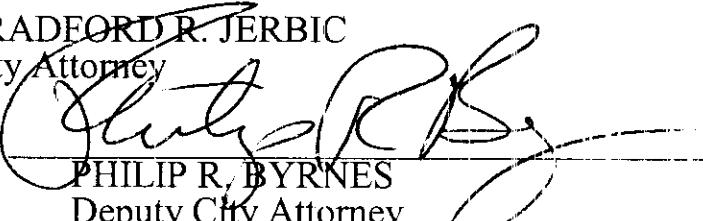
12 V.

13 **CONCLUSION**

14 The CITY may not be held liable for failing to train Court Marshalls to ignore their basic
15 obligation to carry out judicial orders. The CITY should be dismissed from this action.

16 DATED this 23 day of August, 2005.

17 BRADFORD R. JERBIC
18 City Attorney

19 By 

20 PHILIP R. BYRNES
21 Deputy City Attorney
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25 Attorneys for Defendant CITY OF LAS
26 VEGAS

27
28

CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of August, 2005, I placed in the United States Mail at Las Vegas, Nevada, postage prepaid, a copy of the above and foregoing Defendant City of Las Vegas' Motion to Set Aside Default, addressed as follows:

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Marshall R. Saavedra

Kelli Person
An Employee of the City of Las Vegas

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